

ESTTA Tracking number: **ESTTA429725**Filing date: **09/09/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

**Petitioner Information**

Name	Brown Mechanic Inc.		
Entity	Corporation	Citizenship	California
Address	3480 W. Warner Avenue, #H Santa Ana, CA 92704 UNITED STATES		

Attorney information	Deborah A. Gubernick, Esq. Call & Jensen 610 Newport Center Drive, Suite 700 Newport Beach, CA 92626 UNITED STATES dgubernick@calljensen.com Phone:949-717-3000
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**Registration Subject to Cancellation**

Registration No	3629258	Registration date	06/02/2009
Registrants	Huante, Xavier 575 East 238th Place Carson, CA 90745 UNITED STATES  Huante, Gabriel 575 East 238th Place Carson, CA 90745 UNITED STATES		

**Goods/Services Subject to Cancellation**

Class 025. First Use: 2007/01/01 First Use In Commerce: 2007/01/01

All goods and services in the class are cancelled, namely: Clothing for men, women and children, namely, suits, jackets, pants, shorts, skirts, hats, headwarmers, namely, knitted headwear, sweatbands, shirts, turtlenecks, cardigan sweaters, T-shirts, boots, shoes, gym shoes, slippers, hiking boots, sandals, jogging shoes, golf shoes; sportswear and active wear, namely, golf shirts, polo shirts, sweat shirts, undershirts, tank tops, boxer shorts, gym shorts and sweat shorts; sweat pants, ski pants, swimsuits, jogging suits, sweatsuits, warm-up suits, leg warmers, leggings, socks, athletic uniforms; neckwear, sleepwear, robes, pajamas, underwear and gloves

**Grounds for Cancellation**

False suggestion of a connection	Trademark Act section 2(a)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The registration is being used by, or with the permission of, the registrant so as to misrepresent the source of the goods or services on or in connection with which the mark is used.	Trademark Act section 14

Priority and likelihood of confusion	Trademark Act section 2(d)
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### Mark Cited by Petitioner as Basis for Cancellation

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	FYASKÃ#		
Goods/Services	clothing		

Attachments	Petition for Cancellation - FYASKO .pdf ( 6 pages )(256519 bytes )
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### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/dag/
Name	Deborah A. Gubernick, Esq.
Date	09/09/2011

1                                   **IN THE UNITED STATES**  
2                                   **PATENT AND TRADEMARK OFFICE**  
3                                   **BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**  
4

5 In the matter of:

6       Brown Mechanic Inc.,  
7       a California corporation,  
8       petitioner,

9                                   v.

10      Xavier Huante and Gabriel Huante,  
11      individuals,  
12      registrants/respondents.  
13  
14

**PETITION FOR CANCELLATION**

Cancellation No. \_\_\_\_\_

Registration No.: 3,629,258

Registration Date: June 2, 2009

15  
16                                   **PETITION FOR CANCELLATION**  
17

18               Petitioner Brown Mechanic Inc. ("Petitioner"), a California corporation doing  
19 business as Fyaskö, having a business address at 3480 W. Warner Avenue #H, Santa  
20 Ana, CA 92704 believes that it is being and will continue to be damaged by  
21 Registration No. 3,629,258 (the "Registration"), which is registered by Xavier Huante  
22 and Gabriel Huante, individuals (collectively, "Registrants" or "Respondents").  
23 Petitioner hereby files this Petition to cancel the Registration pursuant to Section 14 of  
24 the Trademark Act (15 U.S.C. 1064) and 37 C.F.R. § 2.112(b).  
25

26               As grounds for cancellation, Petitioner alleges as follows:

27               1.     Petitioner is the owner of trademark rights in and to the trademark  
28 FYASKÖ.

1           2.     Petitioner and/or its affiliates has been using the trademark FYASKÖ in  
2 commerce since at least as early as 1999 in connection with *belts, bottoms, hats and*  
3 *tops*, and is currently engaged in such use of the mark in commerce.

4           3.     Since at least as early as 1999, through its continuous and longstanding use  
5 of the trademark FYASKÖ, Petitioner has developed a reputation of quality and  
6 goodwill, and consumers identify goods sold under this mark as originating from  
7 Petitioner.

8           4.     Petitioner applied to register the trademark FYASKÖ in October of 2009  
9 under Serial Number 77/839830, after having used the mark in commerce for a decade.  
10 However, the trademark cited the Registration against Petitioner's application in an  
11 Office Action dated December 29, 2009, based on a likelihood of confusion between  
12 Petitioner's mark and Registrants' Registration. Petitioner submitted a reply, but the  
13 trademark examiner was not persuaded. The examiner issued another office action,  
14 maintaining the 2(d) refusal, on October 20, 2010.

15           5.     Petitioner also owns trademark applications and/or registrations  
16 internationally for FYASKÖ in countries such as Australia, Brazil, Canada, Japan and  
17 in the European Union.

18           6.     Registrants applied to register the mark FIASCO on January 24, 2007 for  
19 *Clothing for men, women and children, namely, suits, jackets, pants, shorts, skirts, hats,*  
20 *headwarmers, namely, knitted headwear, sweatbands, shirts, turtlenecks, cardigan*  
21 *sweaters, T-shirts, boots, shoes, gym shoes, slippers, hiking boots, sandals, jogging*  
22 *shoes, golf shoes; sportswear and active wear, namely, golf shirts, polo shirts, sweat*  
23 *shirts, undershirts, tank tops, boxer shorts, gym shorts and sweat shorts; sweat pants,*  
24 *ski pants, swimsuits, jogging suits, sweatsuits, warm-up suits, leg warmers, leggings,*  
25 *socks, athletic uniforms; neckwear, sleepwear, robes, pajamas, underwear and gloves*  
26 in Class 25. Registrants' Registration was granted for all of the above goods on June 2,  
27 2009.  
28

7. Registrants' mark FIASKO is virtually identical in sound, connotation and appearance to Petitioner's mark, FYASKÖ, and is used for the same types of goods: clothing. Accordingly, the purchasing public is likely to falsely associate Registrants' products with Petitioner, or will erroneously believe that such products are sponsored, licensed, or otherwise endorsed and/or authorized by Petitioner, and are likely to cause harm to the goodwill and reputation of Petitioner.

8. Registrants' mark under Registration No. 3,629,258, so closely resembles Petitioner's earlier-used mark, as to likely to cause confusion, or to cause mistake, or to deceive. Accordingly, the Registration should be canceled under Section 2(d) of the Trademark Act of 1946, as amended.

9. Additionally, on information and belief, Registrants are not using this mark in connection with all of the above goods and all of the goods listed in the Registration.

10. On information and belief, Registrants' trademark was obtained through fraud on the United States Patent and Trademark Office because the mark was not in fact used in connection with all of the goods listed in the application.

11. On information and belief, Registrants executed a declaration on January 24, 2007, declaring that "he/she believes applicant to be the owner of the trademark/services mark sought to be registered . . ." and that "he/she believes the applicant to be entitled to such use" and that "to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce . . ." On information and belief, this declaration is false because Registrants had actual or constructive knowledge of Petitioner's rights to the mark FYASKÖ at the time it applied to register the trademark FYASKÖ. Petitioner has been in business and continues to produce goods under the FYASKÖ brand in relatively close proximity to Registrants: Registrants are based in Carson, California, while Petitioner is roughly only 40 miles from Carson.

12. On information and belief, Registrants also committed fraud on the United States Patent and trademark office by asserting in the application that "The applicant is

1 using the mark in commerce . . . on or in connection with the identified goods and/or  
2 services. The identified goods and services in the application are: *Clothing for men,*  
3 *women and children, namely, suits, jackets, pants, shorts, skirts, hats, headwarmers,*  
4 *namely knitted headwear, sweatbands, shirts, turtlenecks, cardigan sweaters, T-shirts,*  
5 *boots, shoes, gym shoes, slippers, hiking boots, sandals, jogging shoes, golf shoes;*  
6 *sportswear and active wear, namely, golf shirts, polo shirts, sweat shirts, undershirts,*  
7 *tank tops, boxer shorts, gym shorts and sweat shorts; sweat pants, ski pants, swimsuits,*  
8 *jogging suits, sweatsuits, warm-up suits, leg warmers, leggings, socks, athletic*  
9 *uniforms; neckwear, sleepwear, robes, pajamas, underwear and gloves.* Petitioner has  
10 found no evidence of use of Registrants' mark in connection with all of these items.  
11 Accordingly, on information and belief, Registrants' statement that it uses the mark for  
12 all of these goods was false.

13 13. Relying on the false and fraudulent statements identified in paragraphs 10-  
14 11 above, the United States Patent and Trademark Office granted the Registration.

15 14. In view of the above allegations, Registrants should not be entitled to the  
16 continued registration of its trademark FIASKO.

17 WHEREFORE, Petitioner prays that Registration No. 3,629,258 be cancelled and  
18 that this Petition for Cancellation be granted in favor of Petitioner.  
19

20 Petitioner hereby appoints Deborah A. Gubernick, Esq., Scott P. Shaw and David  
21 R. Sugden of the law firm Call & Jensen, members of the bar of the State of California,  
22 to act as attorneys for Petitioner herein, with full power to prosecute said Petition, to  
23 transact all relevant business with the Patent and Trademark Office and in the United  
24 States Courts, and to receive all official communications in connection with this  
25 Petition for Cancellation.  
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Respectfully submitted,

Dated: September 9, 2011

By: /Deborah A. Gubernick/  
Deborah A. Gubernick  
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CERTIFICATE OF SERVICE


I hereby certify that true and complete copies of the foregoing PETITION TO CANCEL Registration Number 3,629,258 is being served on the Registrants via U.S. Mail to:

Xavier Huante and Gabriel Huante  
575 East 238<sup>th</sup> Place  
Carson, California 90745

And on their attorney of record for the subject Registration:

Christopher J. Day  
Law Office of Christopher Day  
9977 North 90th Street, Suite 155  
Scottsdale AZ 85258

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Certificate is executed on September 9, 2011.

  
Valentina Neufeld